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CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**UNITED STATES COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

**INVESTORS FREEDOM CLUB, L.C.,
WILLIAM ANTHONY FOLINO and
GEORGE BELANGER,
d/b/a IFC L.C.,
INVESTMENT FREEDOM CLUB,
VENTURE FREEDOM FUND LTD., and
VENTURE FREEDOM FOUNDATION,**

Defendants,

**And
TINA NOA FOLINO,**

Relief Defendant.

CIVIL ACTION NO.

8:03 -CV-54-T-17TGW

**COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE
RELIEF AND FOR CIVIL
MONETARY PENALTIES
UNDER THE COMMODITY
EXCHANGE ACT, AS AMENDED,
7 U.S.C. § 1 *et seq.***

FILED UNDER SEAL

I.

SUMMARY

1. From January 2001 through at least October 2002, defendants William A. Folino ("Folino") and George Belanger ("Belanger"), individually and doing business as IFC L.C., Investment Freedom Club, Venture Freedom Fund Ltd., and Venture Freedom Foundation, and, from April 9, 2001 to the present, Investors Freedom Club L.C. ("IFC"), solicited and accepted funds from retail investors to engage in speculative trading of foreign currency futures contracts in violation of the Commodity Exchange Act's prohibitions against fraud and the offer and sale of illegal off-exchange foreign currency futures contracts.

2. By falsely representing to potential customers that they would receive consistent profits with annual yields as high as 100% with little or no risk of loss, defendants IFC and Folino induced retail investors to send them funds in amounts ranging from \$300 to \$300,000 to participate in a "club" that would purportedly trade foreign currencies on the interbank currency market.

3. From August 8, 2001 to late September 2002, over 150 customers sent more than \$1.5 million to defendants for the purpose of trading foreign currency futures. The defendants transferred some portion of customer funds to one or more firms purporting to trade in foreign currency, including transfers to one or more firms registered with the Commission. However, the total amount of funds in these accounts did not equal the total amount of customer funds collected by defendants. More than half of the funds collected by IFC were used by defendant Folino and his family, including Folino's wife, for personal goods and services, or transferred to accounts controlled by them.

4. While customer funds were diverted to Folino's own use, defendants IFC and Folino falsely represented to customers that their funds were earning profits. To support the illusion of profitability, defendants IFC and Folino returned funds to some customers on a periodic basis, falsely claiming such funds were profits on the customers' IFC investment. Defendants also periodically sent some customers statements reflecting steady growth in the funds remaining with IFC.

5. Because the transactions offered by defendants are not conducted on or subject to the rules of a board of trade designated or registered by the Commodity Futures Trading Commission ("Commission") as a contract market or derivatives transaction

execution facility for such commodity, or executed or consummated by or through a contract market, defendants IFC, Folino and Belanger have violated Section 4(a) of the Commodity Exchange Act ("Act"), as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), 7 U.S.C. § 6(a) (2000).

6. Furthermore, defendants IFC and Folino have violated Section 4b(a) of the Act, 7 U.S.C. § 6b(a) and Commission Regulations §1.1(b)(1), (2), and (3), 17 C.F.R. §1.1(b)(1), (2), and (3), by making material misrepresentations and omissions, including misrepresenting the likelihood of profits, failing to disclose the risks associated with trading foreign currency futures contracts, misrepresenting that customers had profited, and failing to disclose that customer funds were misappropriated. In addition, defendant Folino, as the controlling person of IFC, is liable for IFC's violations of Section 4b(a) of the Act pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), and Commission Regulations §1.1(b)(1), (2), and (3), 17 C.F.R. §1.1(b)(1), (2), and (3).

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commission brings this action to enjoin defendants' unlawful acts and practices, to bar them from engaging in any commodity-related activity, and to compel their compliance with the Act and the Regulations. In addition, the Commission seeks civil monetary penalties, remedial ancillary relief including, but not limited to, an accounting, restitution, disgorgement, pre-judgment and post-judgment interest, and the appointment of a temporary and permanent receiver, and such other relief as this Court may deem necessary or appropriate. Unless restrained and enjoined by this Court, defendants are likely to and will

continue to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as more fully described below.

8. Tina Noa Folino is liable as a relief defendant because she received ill-gotten gains to which she has no legitimate claim.

II

JURISDICTION AND VENUE

9. Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2 (2001) grants Plaintiff, the Commission, jurisdiction over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint. This Court has jurisdiction over this action pursuant to Section 6c of the Act, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

10. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because defendants are found in, inhabit, or transact business in the Middle District of Florida, and the acts and practices in violation of the Act have occurred within this District, among other places.

III

THE PARTIES

A. Plaintiff

11. Plaintiff **Commodity Futures Trading Commission** ("Commission") is the independent federal regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. § 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. § 1.1 *et seq.*

B. Defendants

12. Defendant **Investors Freedom Club, L.C. ("IFC")** was incorporated in the state of Florida from April 9, 2001 to October 4, 2002. Its principal place of business was listed as 2519 McMullen Booth Road, Suite 191, Clearwater, Florida 33761, which in fact was a personal mailbox at a Mailboxes, Etc. store. IFC has never been registered with the Commission in any capacity or designated by the Commission as a derivatives transaction execution facility.

13. Defendant **William A. Folino ("Folino")** resides at 695 Old East Lake Road, Tarpon Springs, Florida 34689. On the IFC incorporation documents, filed with the state of Florida, Folino was listed as Manager of IFC. Folino represents himself as the Chief Investment Officer of IFC. Folino has never been registered with the Commission in any capacity.

14. Defendant **George Belanger ("Belanger")** resides at 1154 7th Street, N.W., Largo, Florida 33770. Belanger personally solicits customers to invest with IFC, mainly through e-mail and Internet chat forums. Belanger oversees the operation of and manages

the content of the IFC website. Belanger has never been registered with the Commission in any capacity.

C. Relief Defendant

15. Relief defendant **Tina Noa Folino ("T. Folino")** resides at 695 Old East Lake Road, Tarpon Springs, Florida 34689. T. Folino is the wife of Folino. In corporate documents filed with the state of Florida, T. Folino was listed as a Manager of IFC. T. Folino has never been registered with the Commission in any capacity

IV

FACTS

A. Solicitation Fraud

16. Since at least January 2001 through October 2002, defendants IFC, Folino and Belanger have solicited retail customers to purchase illegal foreign currency futures contracts by making false representations, including that the customers' principal is secured and that they are nearly guaranteed to earn profits. Defendants represented that customers' funds would be held in IFC managed accounts. Defendants never articulate to customers the specific characteristics of the "foreign currency investments" in which IFC supposedly invests for or on behalf of its customers. Instead, defendants falsely represent to customers that their funds will be used to trade foreign currencies in the "interbank" market as a means of profiting on price fluctuations.

17. Defendants, however, are actually engaged in the offering and sale of illegal off-exchange futures contracts marketed to the general public as a means to speculate and profit from the anticipated price fluctuations in the markets for foreign currencies.

Customers do not anticipate taking, and do not take, delivery of foreign currency as a result of their investments.

18. Defendants primarily solicit customers via an Internet website, www.investmentfreedomclub.com ("IFC website"), which was designed and published by defendant Belanger with the knowledge and consent of defendant Folino. Customers and prospective customers also correspond with defendants Folino and/or Belanger through an IFC e-mail address or through an Internet chat forum accessed via the IFC website.

19. Defendants have made material misrepresentations via the IFC website about IFC's track record and the status of customer funds. Defendants have made occasional generic risk disclosures on the IFC website. However, the disclosures were vitiated by far more frequent and extravagant claims of past profits and predictions of near-certain future profits.

20. Defendants have also falsely represented via the IFC website, among other things, that: (a) customer funds were held by trading firms or in customers' own accounts, not in IFC bank accounts; (b) IFC traded customer funds on the interbank currency market and that IFC offered customers "buying power" into high yield opportunities that are normally available only to investors with millions of dollars to invest; and (c) risk was reduced or eliminated via insurance, bonds and support of "top world major" banks and financial institutions.

21. In e-mail correspondence with prospective customers, defendants have made false representations such as:

- a. IFC had "placements" in currency trading contracted "between major banks" who fully secure the principal, and the placements averaged approximately four percent returns per month over the long term;
- b. IFC was a party to a "foreign exchange contract" which would earn customers a minimum of six percent per month and seventy-two percent annually;
- c. There is "no risk" in investing with IFC because IFC provides customers a receipt for a "Bank Guarantee (CD)" from a "major bank who holds our money for secured Foreign Exchange Currency Trading;" and
- d. Customer funds are secured through a "CD or secured instrument from top AAA [and] AA rated banks who hold our funds for inter-bank Foreign Exchange trading."

22. At or about the time of their initial deposit, defendants have sent to IFC investors a "Confidentiality and Non-Circumvention Agreement" and a "Non-Solicitation Document" via e-mail. The "Confidentiality and Non-Circumvention Agreement" identifies defendant Folino as "Chief Investment Officer/ Introducer." The Agreement states that defendants IFC and Folino have "knowledge of the Inter-Bank Currency Foreign Exchange between world banks which shall pay an above average rate on a Buy-Sell transaction" and that "[t]hese banks [are] listed as top 1,000 world ranked banks as shown in the world ranking of the Bankers Almanac." In the Agreement, defendants IFC and Folino agree:

- a. to provide such confidential information to [the club member] to enable the purchase of a "secured currency buy-sell," or other type of corporate instrument of guarantee; and

- b. to arrange the discounting of the "currency transaction," or other type of bank instrument of guarantee through major banking institutions that have a policy of forfeiting currencies.

23. In reality, customer funds were deposited into bank and trading accounts under the control of defendant Folino and/or relief defendant T. Folino. None of the customer funds collected by the defendants were secured or traded in the "interbank currency market." The "interbank market" actually involves currency trading between large banks and sophisticated institutions for their own and their customers' commercial and business needs. In contrast, the relatively small amount of IFC customer funds actually traded by defendants were placed with small firms offering foreign currency trading to the retail public. Moreover, the majority of customer funds collected by defendants were misappropriated by defendant Folino and his family, including relief defendant T. Folino.

B. Misappropriation of Customer Funds

24. Defendants instructed customers via the IFC website to join the Club by transferring funds to an IFC account via wire or an online check processing mechanism accessed through a link displayed on the IFC website.

25. From at least April through July 2001, defendants instructed customers via the IFC website to deposit their funds by wire transfer into account #79010416 at SouthTrust Bank in Dunedin, Florida, which was the personal bank account of defendant Folino and relief defendant T. Folino ("Folino SouthTrust Account").

26. For a short time, between July and August 2001, defendants instructed customers via the IFC website to deposit their funds by wire transfer into the segregated

customer funds account of LFG, a Division of Refco, Inc. ("LFG"), account # 3246303, at Harris Bank in Chicago, Illinois. LFG was registered with the Commission as a futures commission merchant. During this period of time, IFC had two accounts at LFG in which only exchange-traded futures contracts were traded. Also during this same period of time, approximately \$115,000 was deposited into these two LFG exchange-traded futures accounts, and these funds were subsequently traded in exchange-traded futures contracts rather than off-exchange foreign currency transactions. From August 8, 2001 through late September 2002, customer funds were deposited into an account in the name of IFC, account #66131543 at SouthTrust Bank in Dunedin, Florida ("IFC SouthTrust Account"). Defendant Folino and relief defendant T. Folino were the sole signatories to the IFC SouthTrust Account. Defendant Folino and relief defendant T. Folino obtained and routinely used one or more debit cards from SouthTrust Bank for the IFC SouthTrust Account.

27. As the result of the defendants' fraudulent solicitations, at least 150 individuals in various parts of the world have sent funds to IFC in amounts ranging from \$300 to \$300,000. Between August 8, 2001 and late September 2002, deposits in the IFC SouthTrust Bank account totaled over \$1.5 million. Most of these customers have not received any funds back from IFC.

28. In order to cover up their misappropriation, defendants IFC and Folino caused defendant Belanger to send statements and reports to customers implying that their entire deposits were invested in the foreign currency exchange markets and that the investments were earning profits. Additionally, defendants IFC and Folino periodically sent some IFC

customers checks or wire transfers, claiming such funds were profits on the customers' IFC investments.

29. However, from August 8, 2001 to late September 2002, defendants IFC and Folino failed to send the majority of customer deposits to any other firms that purported to trade in foreign currency.

30. Of the limited amount of customer funds that defendants IFC and Folino did send to other firms that purported to trade in foreign currency, a portion was deposited into the Folinis' personal trading account and the Folinis' personal bank account at SouthTrust Bank. For example, on March 29, 2002, \$80,000 was wire transferred from the IFC SouthTrust Account to a managed trading account in the name of the Folinis at Forex Capital Markets, Inc. ("FXCM"), a registered futures commission merchant. On June 3, 2002, T. Folino wire transferred \$90,000 from the FXCM trading account to the Folinis' personal bank account. Additionally, on or about May 28, 2002, a check was drawn from the IFC SouthTrust Account in the amount of \$60,000 and was deposited into the Folinis' personal account at SouthTrust Bank. Two days later, the Folinis transferred \$48,050 from their personal bank account to their personal futures trading account at LFG, a registered futures commission merchant.

31. From August 8, 2001 to late September 2002, defendant Folino and his wife used the majority of customer funds for personal expenditures or transferred it to the Folinis' personal bank account. For example, defendant Folino and relief defendant T. Folino withdrew over \$93,000 in cash; over \$105,000 was paid to relief defendant T. Folino, some of that purportedly for "administrative hours," "web design" and "commission";

approximately \$65,000 was paid to various credit card companies; approximately \$52,000 was spent on the Folinos' horse; and approximately \$5,400 was used for school tuition.

32. Section 2(c)(2)(B)(i) and (ii) of the Act provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, so long as the contract is "offered to, or entered into with, a person that is not an eligible contract participant" unless the counterparty, or the person offering to be the counterparty, is a regulated entity, as enumerated in the CFMA.

33. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1, defines an eligible contract participant as an individual who has total assets in excess of: a) \$10 million; or b) \$5 million and who enters the transaction to manage the risk associated with an asset owned or a liability incurred, or reasonably likely to be owned or incurred. The IFC web site targets small, low net-worth investors, and markets the transactions as a means to speculate on currency fluctuations rather than to make or take delivery of currencies. The foreign currency futures transactions alleged herein therefore were futures transactions offered to or entered into principally, if not exclusively, with persons who were not eligible contract participants. As no defendant is a proper counterparty for retail foreign currency transactions, the Commission therefore has jurisdiction over the retail foreign currency transactions alleged herein.

C. Controlling Person

34. Florida corporate records identify Folino as a manager of IFC. He also represented himself as the "Chief Investment Officer," and later as the "Chief Executive Officer," of IFC and was a signatory of IFC's SouthTrust Bank account. Folino opened and

controlled trading accounts in the name of IFC at other firms. He was solely responsible for the investment and disbursement of IFC customer funds. Folino either wrote, or had actual or constructive knowledge of, the entire content of IFC's website. He arranged for the leasing of IFC's mail drop address, which was used on the IFC website and IFC's letterhead. Folino entered into customer agreements on behalf of IFC. Folino therefore is a controlling person of IFC.

D. Relief Defendant

35. T. Folino is the wife of Folino and was listed as a manager of IFC on the incorporation documents filed with the State of Florida. T. Folino is signatory on the IFC SouthTrust Account. T. Folino received and benefited from customer funds from IFC but has no legitimate interest in the customer funds.

36. IFC and Folino have committed fraud upon IFC's customers in connection with the purchase and sale of illegal foreign currency futures contracts as alleged herein. Relief defendant T. Folino has received funds or otherwise benefited from funds that are directly traceable to the funds obtained from IFC customers through fraud.

37. Approximately \$105,000 was paid from the IFC SouthTrust Account to T. Folino, some of that purportedly for "administrative hours," "web design" and "commission." T. Folino wrote numerous checks on the IFC SouthTrust Account for personal expenses. On the request of T. Folino, thousands of dollars were transferred from the IFC SouthTrust Account to the Folino SouthTrust Account.

38. T. Folino will be unjustly enriched if not required to disgorge the funds or the value of the benefit she received as a result of IFC's fraud. T. Folino should be required to

disgorge the funds and assets, or the value of the benefit she received from those funds or assets, which are traceable to IFC's fraud.

39. By reason of the foregoing, T. Folino holds funds and assets in constructive trust for the benefit of IFC's customers.

V.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND THE COMMISSION'S REGULATIONS**

COUNT I

**VIOLATION OF SECTION 4(a) OF THE ACT, 7 U.S.C. § 6(a):
OFFER AND SALE OF COMMODITY FUTURES CONTRACTS
NOT CONDUCTED ON A BOARD OF TRADE
WHICH HAS BEEN DESIGNATED AS A CONTRACT MARKET OR
DERIVATIVES EXECUTION FACILITY
(AGAINST IFC, FOLINO AND BELANGER)**

40. Plaintiff realleges paragraphs 1 through 39 above and incorporates these allegations herein by reference.

41. Since January 2001 and continuing to at least October 2002, defendants IFC, Folino and Belanger have offered to enter into, entered into, executed, confirmed the execution of, or conducted an office or business in the state of Florida for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated by the Commission as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts have not been executed or consummated by or through a contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a)

(2001).

42. From January 2001 and continuing to at least October 2002, Folino, as principal and manager of IFC directly or indirectly controlled IFC and its schemes and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count I. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001), Folino is liable for the violations described in this Count I to the same extent as IFC.

43. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Section 1.2 of the Regulations, 17 C.F.R. § 1.2 (2002), IFC is liable for any violations of Section 4(a) of the Act, 7 U.S.C. § 6(a), by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with IFC.

44. Each foreign currency futures transaction (i) not conducted on or subject to the rules of a board of trade that has been designated by the Commission as a contract market or registered as a derivatives transaction execution facility for such commodity or (ii) not executed or consummated by or through a contract market, including but not limited to those conducted by the defendants as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act, 7 U.S.C. § 6(a).

COUNT II

VIOLATION OF SECTION 4b(a) OF THE ACT AND REGULATION 1.1(b), 7 U.S.C. § 6(a) AND 17 C.F.R. §1.1(b): FRAUD (AGAINST IFC AND FOLINO)

45. Plaintiff re-alleges paragraphs 1 through 45 above and incorporates these allegations herein by reference.

46. From January 2001 and continuing to at least October 2002, defendants IFC and Folino, in or in connection with the orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2001), have cheated or defrauded or attempted to cheat or defraud investors or prospective investors and willfully deceived or attempted to deceive investors or prospective investors by, among other things: a) falsely guaranteeing profits and materially misrepresenting profit potential and risks associated with the illegal foreign currency futures contracts they offered and purported to sell to members of the public; b) luring customers by falsely claiming that IFC customer funds were secured; c) misrepresenting, verbally and through account statements to customers, the results of their trading, and d) misappropriating customer funds.

47. Defendants IFC and Folino committed the aforementioned acts all in violation of Section 4b(a) the Act, 7 U.S.C. § 6b(a), and in violation of Commission Regulation §1.1(b), 17 C.F.R. § 1.1(b) (2002).

48. From January 2001 through at least October 2002, Folino, as principal and manager of IFC, directly or indirectly controlled IFC and its schemes and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count II. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Folino is liable for the violations described in this Count II to the same extent as IFC.58.

49. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Section 1.2 of the Regulations, 17 C.F.R. § 1.2, IFC is liable for any violations of Sections

4b(a)(2)(C)(i) and (iii) of the Act by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with IFC.

50. Each fraudulent misrepresentation and omission, including those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a) of the Act and Commission Regulation 1.1(b).

VI

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to the Court's own equitable powers, enter:

1. orders of preliminary and permanent injunction prohibiting defendants IFC, Folino and Belanger, and any other person or entity associated with them, including any successor thereof, from engaging in conduct violative of Section 4(a) of the Act, 7 U.S.C. § 6(a), and defendants IFC and Folino, and any other person or entity associated with them, including any successor thereof, from engaging in conduct violative of, Section 4b(a) of the Act, 7 U.S.C. § 6b(a) and Commission Regulation §1.1(b)(1), (2), and (3), 17 C.F.R. § 1.1(b);
2. an order directing defendants and relief defendant and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;

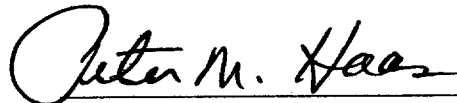
3. an order directing defendants and relief defendant to make full restitution to every investor whose funds were received by them as a result of acts and practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;

4. an order directing defendants to pay a civil penalty in the amount of not more than the higher of \$120,000 for each violation, or triple the monetary gain to Defendants for each violation of the Act;

5. an order requiring defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

6. such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully submitted by,



Peter M. Haas, Senior Trial Attorney
(202) 418-5377

Christine M. Ryall, Senior Trial Attorney
Fla. Bar #0983550
(202) 418-5318

Attorneys for Plaintiff
Commodity Futures Trading Commission
Division of Enforcement
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
(202) 418-5000 (telephone)
(202) 418-5538 (facsimile)

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